IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 8390 of 1994

Between:

Reddibathula Vijayabhaskar Reddy S/o. Sivaramireddy,
r/o. Gompelli (V), Cherla (M), Khammam dist.

..... PETITIONER

AND

1 The Commissioner of Survey, Settlements & Land Records,
Station Road, Nampally, Hyderabad
2 The Director of Settlements,
Gagan Vihar, 4th Floor, Opp: Gandhi Bhavan,
Nampally, Hyderabad
3 The Settlement Officer, Bhadrachalam (Sub-Collector, Bhadrachalam)
4 The Mandal Revenue Officer, Cherla Mandal,
Cherla, Khammam dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records of case No.L1/1081/86 dt: 17/9/93 communicated through CSS&LR Ref.No.L1/1081/86 dt: 23/9/93 from the Office of the Commissioner of Survey, Settlements and Land Records, A.P., Hyderabad and quash the same by the issuance of a writ of certiorari or any other appropriate writ, order or direction as may be deemed fit and direct the Settlement Officer, Bhadrachalam, to grant a ryotwari patta for the lands S.Nos. 28/1-P, H.1-10, 28/1-P H. O-72, 28/3 H.O-13 and 28/5 H. 3.74 situated in Gommugudem (V), Cherla (M), Khammam Dist.

Counsel for the Petitioner: MR.A.RANGACHARYULU

Counsel for the Respondents : GP FOR REVENUE

The Court made the following :

O R D E R :

The Petitioner herein, who seeks to be the heir and successor to his paternal uncle Reddybathula Balarami Reddy and his wife Basavamma, filed this Writ Petition, *inter alia,* seeking writ of Mandamus challenging validity and correctness of the order dated 17.09.1993 passed by the first respondent herein as communicated through the proceedings dated 23.09.1993 as bad, illegal and void.

The case of the petitioner, in brief, is that his paternal uncle Reddybathula Balarami Reddy and his wife Basavamma, laid a claim for grant of patta under Regulation I of 1969 on the basis of their prior possession, consequent upon abolition of Mahals and in terms of Andhra Pradesh Mahals (Abolition and Conversion into Ryotwari) Regulation I of 1969 claimed that they have been in possession for the required period of 8 years. It was stated that in the enquiries the said aspect has not been given proper consideration in spite of fact that several documents have been filed, consisting of cist receipts, lease deeds, nazarana receipts and other documents, which were burnt away in a fire accident that occurred in the night of 12.07.1974. By taking note of the said accident, the then Commisioner of Survey, Settlements and Land Records made enquiry and observed as to such substantial loss, but however, noting that such a loss could not in any way deprive the parties of any rights to which they are entitled. In pursuance of the claim made by them initially as per the orders in case no.658, dated 03.09.1975, the authority-Settlement Officer, Rajamundry, rejected the request on the ground that they have been only trespassers during the year 1968 and 1969 and they failed to prove the possession for a continuous period of 8 years immediately

prior to notified date i.e. 26.12.1970. On appeal, the said orders were confirmed as per orders in A.P.61/76 dated 25.01.1980 by the Director of Settlements. Thereafter, further appeal was also dismissed by the Commissioner of Survey, Settlements and Land Records as per order dated 01.09.1981. Thereupon, this court, as per order in Writ Petition No.9148 of 1981, set aside these orders and remanded the matter for *de novo* enquiry. Thereafter, once again the case of the petitioner is that in spite of filing several documents and material in his support, the Special Dy. Collector (Tribal Welfare), Paloncha rejected the claim as per order dated 14.03.1976. On further appeal, the first respondent herein confirmed the said orders and dismissed the appeal as per order dated 17.09.1993, which was communicated through letter dated 23.09.1993. Hence, the present Writ Petition.

In the affidavit filed in support of this Writ Petition, the petitioner has given narration of the relevant law especially Regulation I of 1969 and vis-à-vis its applicability consequent to the Mahals, which includes the Nagur taluq, where the lands claimed by him are situated. Further, it is pointed out that in spite of the fact that the documents filed were destroyed in a fire accident which occurred on 12.07.1974, even the documents which are available on record have not been given due consideration. It is submitted that the conclusion as arrived at by the authorities to the effect that their possession is only from 1968-1969 can not be accepted. In this regard, it is pointed out that their possession has not only been reiterated in the certificate issued by the Agent and the Estate Naib, Cherla on 08.10.1967 but also guarantee bond dated 25.05.1967 executed by Basavamma. That apart, orders dated 14.03.1976 were passed in pursuance of the application filed by one Kodem Chinna Ramaiah claiming restoration of possession, rejecting his claim and reiterating the possession of Basavamma. Even otherwise, it was stated that apart from the oral evidence adduced, the petitioners have filed several other documents including cist receipts, etc., which remained

unconsidered and therefore, the entire findings as arrived at by the authorities, are totally perverse.

Above all, the main contention urged by the learned counsel appearing for the petitioner is that in fact the appeal before the first respondent was heard, as evident from their own proceedings, on 04.02.1992 and whereas the orders were passed on 17.09.1993 and the same were sought to be communicated by letter dated 23.09.1993. Apparently, it is submitted that having regard to such long lapse of time, it can not be accepted that there is any proper applicability of mind by the authority while considering several pleas raised on behalf of the petitioner vis-à-vis documents to show their possession much prior to the relevant notified date even extending beyond 8 years.

The learned Government Pleader appearing on behalf of the respondents sought to sustain the impugned orders on the ground that both the authorities, subsequent to remand made by this Court, have rightly considered the entire case from a proper perspective and having regard to the fact that there is both lack of proof and substantiation of their possession, rejected the patta.

Considering the submissions made and also on perusal of the material, the question which falls for consideration is whether the claim made by the petitioner's paternal uncle Reddybathula Balarami Reddy and his wife Basavamma, is sustainable and the authorities were right in rejecting the same ?

The entire claim for grant of patta under Regulation I of 1969 by petitioner's paternal uncle Reddybathula Balarami Reddy and his wife Basavamma, rests on the basis that they have been in possession for a period of 8 years prior to the notified date, and therefore patta ought to have been granted. Whereas the authorities

have rejected the claim only on the ground that such continuous possession has not been proved, on which no such patta can be granted and the same is also contrary to the very same Regulation.

Having considered the submissions on merits and also on various aspects as made across the bar from both the sides, it is seen that the appeal filed as against the orders of rejection, was heard on 04.02.1992. However, the impugned orders rejecting the said appeal, were passed on 17.09.1993. Admittedly, there is no hearing or reopening of the matter in between these two dates by the first respondent herein. After hearing the matters from both the sides, the order apparently came to be passed after lapse of more than one and half year. There is no explanation or any reason given for such delay in passing the orders and no explanation is forthcoming as to why the matter could not be reopened or reheard. It can not be said that having heard the matter and kept pending for such a long period, the same freshness would remain in regard to the pleas urged. To avoid any amiss, orders are to be passed at the earliest. On the face of it, the matter requires reconsideration and disposal on a fresh reappraisal.

In the circumstances, the Writ Petition is allowed. Impugned orders are set aside. The matter is remitted back to the first respondent for fresh consideration and disposal on merits in accordance with law after giving notice and opportunity to both sides. No costs.

28.10.2004

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on thisd the 28th day of October, 2004.

Assistant Registrar

/True copy/

Section Officer.

Copy to:

1 The Commissioner of Survey, Settlements & Land Records,
Station Road, Nampally, Hyderabad
2 The Director of Settlements,
Gagan Vihar, 4th Floor, Opp: Gandhi Bhavan,
Nampally, Hyderabad
3 The Settlement Officer, Bhadrachalam (Sub-Collector, Bhadrachalam)
4 The Mandal Revenue Officer, Cherla Mandal,
Cherla, Khammam dist.

5 Two CCs to the G.P. for Revenue, High Court of A.P., High Court buildings, Hyderabad (o.u.t.)

6 Two CD copies.